

MINUTES

COMMISSION ON STATE MANDATES

State Capitol, Room 126
Sacramento, California

April 27, 2000

9:30 A.M. - PUBLIC SESSION

Present: Chairperson Annette Porini
Representative of the Director of the Department of Finance
Vice Chair William Sherwood
Representative of the State Treasurer
Member Millicent Gomes
Representative of the Director of the Office of Planning and Research
Member Michael Foulkes
Representative of the State Controller
Member Albert Beltrami
Public Member
Member Joann Steinmeier
School Board Member
Member John Lazar
City Council Member

CALL TO ORDER AND ROLL CALL

Chairperson Porini called the meeting to order at 9:34 a.m.

APPROVAL OF MINUTES

Item 1 March 30, 2000

Paula Higashi noted that the time of adjournment for the March hearing should read 12:41 p.m. Member Steinmeier noted that "BSBA" should read "CSBA" on page ten. With a motion by Member Beltrami and second by Member Sherwood, the minutes were unanimously adopted, as corrected.

PROPOSED CONSENT CALENDAR

PROPOSED STATEMENT OF DECISION

Item 5 *School Site Councils and Brown Act Reform* – CSM 4501
Kern Union High School District, San Diego Unified School District, and
County of Santa Clara, Co-Claimants
Government Code Section 54952
Education Code Section 35147
Statutes of 1993, Chapter 1138 and Statutes of 1994, Chapter 239

ADOPTION OF PROPOSED STATEWIDE COST ESTIMATE

- Item 8 *Pupil Residency Verification and Appeals* – CSM 96-348-01
Sweetwater Union High School District and
South Bay Union School District, Co-Claimants
Education Code Sections 48204.5 and 48204.6
Revenue and Taxation Code Section 97.3
Statutes of 1995, Chapter 309

Paula Higashi noted that the Commission had not received comments on either item. Member Steinmeier moved for adoption. With a second by Member Sherwood, the consent calendar, consisting of Items 5 and 8, was adopted unanimously. [For the record, Member Foulkes noted the State Controller's Office opposition to Item 5.]

HEARINGS AND DECISIONS, PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 7 (action)

Note: Witnesses were sworn in en masse before consideration of Items 2-7.

RECONSIDERATION OF COMMISSION ACTION ON FEBRUARY 24, 2000

- Item 2 *Standardized Emergency Management Systems (SEMS)* – CSM 4506
County of San Bernardino, Claimant
Government Code Section 8607
California Code of Regulations, Title 19, Sections 2400 - 2450
Statutes of 1992, Chapter 1069

Pat Hart Jorgensen introduced this item. The parties were represented as follows: Marcia Faulkner, with the County of San Bernardino; Jim Cunningham, interested party with the San Diego Unified School District; Jim Lombard, with the Department of Finance; Robert McKechnie, with the State Office of Emergency Services; and, Leslie Lopez, with the Attorney General's Office on behalf of the Department of Finance.

Member Gomes moved to adopt Option 1-A, to find that the subject legislation does not constitute a new program or higher level of service. Member Foulkes seconded the motion.

Member Steinmeier asked the parties if they had any objection to the motion. Ms. Faulkner voiced her objection and distributed a handout showing the effect of disasters that have occurred in San Bernardino County. She submitted that the County had no reasonable alternative but to implement SEMS.

Mr. Cunningham asked if he was correct that the motion did not include the issue of the application of *Hayes* or *Sacramento II*. Chairperson Porini replied that he was correct.

Member Beltrami asked where the motion left the issue of coercion and voluntary coercion. The Chair responded that the motion did not address the issue. Member Beltrami agreed that, in this instance, the issue is probably not persuasive. However, he noted his future interest in the issue if someone were to come forward with added material.

The motion passed 6-0, with Member Lazar abstaining.

TEST CLAIMS

- Item 3 *Involuntary Transfers* – CSM 4459
San Diego Unified School District, Claimant
Education Code Section 48432.5 and 48637.1 - 48637.3
Statutes of 1978, Chapters 668 and 1256

Ms. Higashi introduced this item. She noted that the item had been postponed at the previous hearing in March at the request of the Department of Finance (DOF). The revised staff analysis at the March hearing was now supplemented by staff's response to the comments received after the March hearing. Based on the revised staff analysis and the supplemental analysis, staff recommended the Commission approve the test claim based on Option 1.

Ms. Higashi explained that, if the Commission adopted Option 1, approval would be based on the following findings: An involuntary transfer of a pupil to a continuation school, opportunity school, class or program does not deprive that pupil of his or her property right to an education, and does not exclude that pupil from school. Therefore, the requirements to adopt the prescribed regulations for the involuntary transfers results in a new program or higher level of service and imposes costs mandated by the state upon school districts.

Parties were represented as follows: Carol Berg, with the Education Mandated Cost Network; Jim Cunningham, with the San Diego Unified School District; and, Jeff Bell and Jeannie Oropeza, with the DOF.

Mr. Cunningham noted his agreement with staff's recommendation. Member Foulkes asked the claimant if they contended that there is no stigma attached to a student being forcibly moved to a continuation high school. Mr. Cunningham replied that, under the U.S. Supreme Court decision, stigma is not enough to trigger a liberty interest. Rather, there must be a negative effect on reputation, coupled with a denial of a state right. Mr. Cunningham submitted that there is no state right to attend a particular school. Member Foulkes asked about property interest. Mr. Cunningham replied that, under the same cases cited, there is no state right to attend a particular school. Member Foulkes asked for comment from the DOF.

The DOF contended that an involuntary transfer does have a negative impact on a student. Dr. Berg responded that students at continuation schools attend school for the same length of time and receive the same diploma. Ms. Oropeza submitted that the students do not have the same access to classes. Dr. Berg replied that continuation schools have the same state graduation requirements and that those classes, which meet the requirements for entry into the Cal State University system, are all available at continuation schools. Ms. Oropeza argued that advanced placement courses are not offered and that the University of California will not consider students without those courses.

Member Steinmeier noted that community colleges offer advanced placement courses. Further, involuntary transfers are not always permanent. She submitted that continuation schools do not deprive students of an education and that determined students can still get into four-year institutions. Member Steinmeier argued that there is no clear right to go to a particular school in the state. She agreed with staff's analysis that the test claim legislation does contain a reimbursable state mandate.

Mr. Cunningham clarified that continuation schools are not a punishment – most students attending these schools do so voluntarily.

Member Beltrami asked Dr. Berg what the difference was with continuation schools. Dr. Berg explained that class sizes are usually very small and counselor-to-student ratios are high. The school days typically start and end later, though students attend school for the same number of minutes.

Having taught at a continuation school, Member Foulkes disagreed that the quality of education was the same at those schools. He noted his belief that this claim sets up a dangerous precedent for saying that these students do not have constitutional rights. Member Foulkes submitted that the students do have rights because they are losing out on something very tangible and important in the state's education system.

Member Gomes inquired about the difference between the process for an expulsion and an involuntary transfer. Mr. Cunningham explained that the notice and hearing requirements for expulsions arise because the student has a constitutional right to an education. Dr. Berg added that a transfer does not deny the student the right to an education; it simply changes the school they must attend. Member Gomes asked where the new program or higher level of service came in. Mr. Cunningham replied that, prior to the test claim legislation, the transfer did not require a notice or hearing procedure.

Ms. Oropeza argued that the district has a choice to perform an involuntary transfer as opposed to an expulsion. She submitted that the due process requirements are the same. Mr. Bell added that costs associated with the transfer process are not reimbursable because transfers are discretionary.

Member Steinmeier moved staff's recommendation to find a mandate under Option 1. Member Beltrami seconded the motion. The motion failed 3-4, with Members Beltrami, Lazar, and Steinmeier voting "Aye," and Members Foulkes, Gomes, Sherwood, and Porini voting "No." Member Foulkes moved Option 2, to partially approve the test claim based upon the finding of a property interest. Hearing no second, the motion died. Member Gomes moved to find no new program or higher level of service. With a second by Member Foulkes, the motion passed 4-3. Members Lazar, Steinmeier, and Beltrami voted "No."

Item 4 *Seriously Emotionally Disturbed (SED) Pupils: Out-of-State Mental Health Services - 97-TC-05*
County of Los Angeles, Claimant
Government Code Section 7576
Statutes of 1984, Chapter 1747, Statutes of 1985, Chapter 1274,
Statutes of 1996, Chapter 654
California Code of Regulations, Title 2, Division 9, Chapter 1
California Department of Mental Health Information Notice No: 86-29

David Scribner introduced this item. He noted that there were two issues for the Commission's consideration. The first issue was whether a shift of costs and activities between local and governmental entities creates a new program or higher level of service. The second issue was whether there are costs imposed by the state. Staff recommended that the Commission adopt Option 1-A, finding that the *City of San Jose* case does not preclude a finding that the test claim legislation has imposed a new program upon counties. Staff further recommended the Commission adopt Option 2-A, approving the test claim for the activities specified in the recommendation.

Parties were represented as follows: Leonard Kaye, Gurubanda Singh Khalsa, Robert Ulrich, and Paul McIver, all with the County of Los Angeles; and, Dan Stone with the Attorney General's Office on behalf of the Department of Finance.

Mr. Kaye agreed with staff's recommendation and findings. Mr. McIver, with the Los Angeles County Department of Mental Health, outlined the services under the SEDS program and the related problems he deals with on a daily basis. Mr. Ulrich, also with the Department of Mental Health, assured the Commission that the County has internal controls to identify the applicable costs for the program and has established good working relationships with their own Auditor-Controller as well as with the State Controller's Office. Mr. Khalsa asked for the Commission's continued support in this time of mental health underfunding at the local level.

Mr. Stone disagreed with staff's narrow interpretation of the *City of San Jose* case. He urged the Commission to adopt Option 2-A, finding that the programs and services at issue here are required under federal law and therefore do not constitute a reimbursable state mandate.

Member Steinmeier noted that the key question was whether the federal IDEA applies to counties. Though the Commission does not have precedent, the logic they applied to the test claim on in-state placement was that the federal IDEA did not apply to counties. Member Steinmeier stated that, to be consistent, the Commission should find that it does not apply. Mr. Scribner agreed that, on the in-state claim, the Commission considered federal law, but it did not consider it a bar to subvention. He did not think they determined whether counties, under federal law, were considered an LEA. Rather, the Commission made a blanket determination that the IDEA was not pertinent to the test claim.

For consistency, Mr. Scribner agreed with Member Steinmeier that the Commission should find that the federal law does not apply in this case. Member Steinmeier said the next question would be what the law was prior to the enactment of the test claim legislation. She noted that counties were not responsible for out-of-state placement, so there is a change here. She was still unclear as to whether *City of San Jose* applied in this case.

Member Gomes asked if Member Steinmeier was contending that the school districts were paying for out-of-state placements prior to the LEA being responsible. Member Steinmeier replied that school districts were, prior to the test claim legislation. Member Gomes asked if that was a county to local agency shift. Member Steinmeier wanted to discuss *City of San Jose* because it is not related to federal law; it is related to the internal shift inside of California.

Mr. Scribner explained that, in *City of San Jose*, the counties clearly had the opportunity to impose the booking fee requirement upon cities. Under this program, an LEA has no authority to tell the county whether to provide these out-of-state placements. Further, *City of San Jose* dealt with costs only. Mr. Scribner submitted that this claim deals with costs and activities, which falls under the Commission's mandate subvention code sections and the Constitution.

Mr. Stone disagreed with Mr. Scribner that there are factual differences. In response to Member Steinmeier's question of whether federal law dictates that counties or mental health departments, or some specific local agency must pay for the costs of any given program, Mr. Stone submitted that the fact that counties are not named in the specific legislation should not dispose of the question.

Mr. Kaye agreed with Mr. Scribner. He added that the State Department of Education received federal funds to administer this program. Prior to the test claim legislation, they chose to assign

those responsibilities to school districts. Now, they have assigned the responsibilities to counties. Citing the *Hayes* case, he claimed that the shift created a reimbursable state mandate. Mr. Kaye further noted the letter from the Assistant Superintendent of the Los Angeles Unified School District (page 1165) that federal funds are received by local school districts for administering this program. Mr. Kaye noted that, when the shift occurred and counties became responsible, none of these federal funds were transferred to counties. Moreover, he submitted that, according to federal officials, the county is not an eligible recipient for any federal IDEA funding.

Member Beltrami noted that in *City of San Jose*, the counties charge the cities, and the cities are not forced to incarcerate people. In this case, there is no choice to carry out this function on the part of the county.

Member Foulkes agreed that there is a mandate in this case, and that *City of San Jose* does not apply. He moved to adopt the staff recommendation, including Options 1-A and 2-A. Member Steinmeier seconded the motion. The motion carried unanimously.

DISMISSAL OF TEST CLAIM

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| Item 6 | Dismissal of the Special Education Test Claim filed by the Santa Barbara County Superintendent of Schools with the State Board of Control on October 31, 1980 - SB-90-3453
Statutes of 1977, Chapter 1247 and Statutes of 1980, Chapter 797
(Tit. 2, Cal. Code Regs., § 1183.08) |
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Paula Higashi introduced this item. She reviewed the history of the claim and noted that there are two issues before the Commission today. The first issue is whether the Commission has the authority to dismiss the pending test claim. Staff found that the Commission has the authority under Common Law Principles to proceed with the dismissal hearing, since the Commission's 60-day notice to all identified school districts exceeded due process requirements. The second issue involves what type of findings the Commission must make in a dismissal hearing. Ms. Higashi noted that, while case law recognizes that administrative agencies like the Commission have the inherent power under Common Law to dismiss a pending action for delay in prosecution, this power is not without limits. There is no statute that explains the circumstances under which a court may find that a pending matter should not be dismissed for lack of prosecution. However, staff found that if the Commission, upon hearing testimony, determined that all or a portion of the test claim should not be dismissed, it must do so on a finding that good cause existed for the delay. Staff also concluded that, in order for the Commission to determine that the contested portion of the Santa Barbara test claim, namely Education Code section 56026, should be dismissed, the Commission must establish that the claimants engaged in unreasonable delay and that such delay prejudiced the Commission. However, if the Commission determined that all or a portion of the claim should not be dismissed, staff found that the Commission need only make a finding that good cause existed for the delay.

Parties were represented as follows: Joseph Mullender and Anthony Murray, with Long Beach Unified School District; Diana McDonough, for the supplemental claimant, Education Mandated Cost Network, and Educational Legal Alliance; and, Daniel Stone and Kyungah Suk, with the Attorney General's Office on behalf of the Department of Finance (DOF).

Mr. Murray agreed with staff's September 30, 1999 analysis. In that analysis, staff found that the Santa Barbara claim is still pending. He contended that the *Hayes* court remanded the issue to the Commission to resolve the Santa Barbara and Riverside test claims. Mr. Murray disagreed with the idea that Santa Barbara abandoned its claim and with staff's position that the Commission has power to dismiss the claim under the doctrine of laches. He urged the Commission to decline to dismiss the claim.

Ms. McDonough agreed with Mr. Murray. She noted that a test claim is a class action and that Riverside came forward for Santa Barbara. She added that, until after July 31, 1995, it was reasonably believed that *Maximum Age Limit* included ages 3 to 5 and 18 to 21. After that date, it was too late to file a supplemental claim.

Ms. Suk submitted that all of the supplemental claimants met the requirements outlined in the Commission's statement of decision and that Santa Barbara did not meet those requirements. She urged the Commission to dismiss the claim.

Regarding the statement in staff's analysis that "the delay prejudiced the Commission," Member Beltrami asked staff to clarify if the delay prejudiced the Commission or the DOF. Ms. Jorgensen replied that staff did not say that occurred, rather, it was the Commission that moved for dismissal. She added that the Commission should look at whether the DOF or the Commission would be prejudiced.

Mr. Stone disagreed with Mr. Murray's contention that no party had suffered any prejudice. He suggested the DOF was prejudiced because its liability was increased by the supplemental claims and that the Commission followed an extraordinary procedure when it opened the claim up. Mr. Stone submitted that the Commission did so in part because it recognized that Santa Barbara was no longer pursuing its claim.

Member Steinmeier asked Mr. Stone what documentation the Commission has to support his contention that Santa Barbara failed to respond. He replied that the Riverside and Long Beach representatives testified before the Commission in 1996 that Santa Barbara had dropped out. Mr. Stone added that the Commission has Santa Barbara's letter stating that they decided not to put any more money or effort into the claim, as well as his own declaration indicating the DOF had been told that Santa Barbara had dropped out by Commission staff and Riverside representatives in 1993, 1994 and 1995.

Member Steinmeier noted that, in the same letter, Santa Barbara indicated that they were handing their case onto Long Beach. Mr. Stone replied that it was too late.

Ms. Higashi distributed two late filings. The first was a declaration from Santa Barbara, signed under penalty of perjury. It was appended to the letter previously filed by Santa Barbara. The second was a declaration from Dr. Carol Berg from the Education Mandated Cost Network.

Ms. McDonough disagreed with Mr. Stone's contention that the Commission opened the matter back up to supplemental claimants because Santa Barbara had dropped out. She submitted that, since Riverside had decided to pursue the matter only from 1993 forward, the Commission opened the claim back up to allow other claimants to handle remaining matters. Mr. Stone agreed, but noted that the supplemental claimants were free to name new subjects as well.

Ms. Jorgensen noted that in the September 26, 1996 Commission hearing transcript it was Craig Biddle that indicated Santa Barbara had dropped out, though he was not representing the district.

Member Sherwood noted his belief that Santa Barbara had dropped out of the process. He agreed with Mr. Stone that the Commission went the extra mile by opening the claim back up. Though he was not sympathetic to Long Beach or Santa Barbara, he did not see in writing, in the transcripts, or in legal documents where Santa Barbara was thoroughly and properly notified of the situation.

Member Beltrami noted his concern with the fact that Santa Barbara merely said they ‘thought this was being handled.’

Mr. Murray submitted that Santa Barbara never asked the Commission to open the claim up, rather, they said to do what the *Hayes* case ordered and decide their claim. He further contended that the DOF had not been prejudiced.

Member Beltrami asked Mr. Murray when Santa Barbara had come before the Commission asking them to resolve the case after it was remanded by the court. Mr. Murray replied that, for ten years before the *Hayes* remand, Santa Barbara appeared twice in the Board of Control and twice in the superior courts. They ran out of money after ten years of actively litigating the case. Mr. Murray submitted that Santa Barbara was reasonable to assume the Commission would decide the case after having been told by the Court of Appeals to do so.

Member Beltrami questioned if they assumed it would be decided in their absence.

Mr. Murray replied that there was no indication, rule, or principle of law that says Santa Barbara had to do anything more.

Dr. Berg explained that every person in Santa Barbara’s administrative unit has changed. She noted that, in 1994, the last person in administrative personnel called her and indicated her hope that, though none of the former personnel remained, that Santa Barbara was still an active part in the class action. At the time, Dr. Berg assured her that they were because no one in Santa Barbara had ever indicated an interest in withdrawing to her.

Member Foulkes asked Dr. Berg if, during the 20-year period of *Special Education*, she was aware of any unnecessary delay caused by the Commission or the Commission staff on this case. She replied, “not particularly to Santa Barbara.” Dr. Berg noted that *the Hayes* court remanded the case in 1993 and the Commission did not start hearings until late 1995 or early 1996.

Member Foulkes reiterated his question. Dr. Berg replied that she did not think there were unnecessary delays. Rather, she stated that things were proceeding as normal. The Chair asked her to define her statement. Dr. Berg replied that, once the hearing started, the case has moved along.

Member Foulkes next questioned if Dr. Berg believed this case has been pushed as effectively and expediently by Santa Barbara, as one would expect from local governments. Dr. Berg responded that, from a member of the class action portion of it, she did.

Member Foulkes asked Dr. Berg if she believed that, if the Commission followed staff’s recommendation, because of additional workload on the Commission, it would delay other pending cases. Dr. Berg replied that she had no knowledge of that and therefore could not respond properly. Member Foulkes indicated that he thought each issue is important and needs to be reviewed. However, he noted that there has currently been representations that the Commission is not following cases judiciously. He thought this case was a perfect example of a delay on the part of the claimants, significantly and throughout the record. Regarding the question of laches, Member Foulkes agreed with Member Sherwood that it may not arise to that.

However, he thought that it was important to recognize the impact of delays on the part of claimants.

Mr. Murray submitted that the Commission should have promptly decided the *Hayes* case upon remand. If not, he contended that they should have provided an opportunity for other districts to take over the case before dismissing it. Mr. Murray argued that that was the minimum that due process requires.

Chairperson Porini stated that the courts term a claim like this “stale.” She argued that the only reason this issue passes the “giggle test” is because of the Commission’s own regulations. She wanted to make it public that the Commission intends to revise its regulations to no longer allow a claim that clearly appears to be stale to sit for 20 years. She agreed with Dr. Berg that the Commission is trying to expedite its work and added that they want to ensure that they have all the tools to do so.

Member Steinmeier agreed with Member Sherwood that this decision may be made on a technicality. But, based on the Commission’s own rules which claimants tried to follow, the Commission has not done what it needed to do to make sure they got rid of stale cases. She submitted that this is the Commission’s responsibility.

Member Sherwood moved for a dismissal of the Santa Barbara claim, other than that portion related to *Special Education*, ages 3 to 5 and 18 to 21. Member Steinmeier seconded the motion. Ms. Higashi clarified that this referred to Education Code section 56026. On a roll call vote, the motion passed unanimously. Member Lazar abstained.

APPEAL OF EXECUTIVE DIRECTOR'S ACTION

- Item 7 *Special Education for Ages 3 to 5 and 18 to 21 -*
CSM 3986A, SB 90 – 3453
Long Beach Unified School District, Claimant
Department of Finance's Appeal of the Executive Director's Action to Consolidate a Portion of the Special Education Test Claim Originally Filed by Santa Barbara County Superintendent of Schools on October 31, 1980 (SB 90 – 3453) with the Special Education Test Claim Filed by Long Beach Unified School District on September 26, 1996 (CSM – 3986A), Education Code Section 56026 Statutes of 1977, Chapter 1247; Statutes of 1980, Chapter 797 (Tit. 2, Cal. Code Regs., §§ 1181 and 1183.06)

Paula Higashi introduced this item. She explained that, since the Commission dismissed the withdrawn portions of the Santa Barbara claim in Item 6, staff recommended that the Commission deny the Department of Finance's appeal of the Executive Director's action to consolidate the portion of the test claim that remains with the *Special Education* test claim previously filed by the Long Beach Unified School District. This action would allow the consolidation to stand and permit the administrative law judge from the Office of Administrative Hearings to close the administrative record and prepare a proposed statement of decision for consideration by the Commission. The primary change would be that the reimbursement period for the Long Beach test claim would then begin in 1980 instead of 1995, if the Commission were to approve that test claim. Staff recommended the Commission deny the appeal.

Mr. Stone argued that, in *Hayes*, the Court of Appeal said to "resolve" Santa Barbara, which does not mean "grant." He submitted that the Commission has already resolved the matter. Mr. Stone alleged that Santa Barbara understood that it is sufficient for one test claimant to proceed, which Riverside did. Riverside identified the areas for the Commission to consider, which it did. Therefore, it is not inconsistent with what the Commission has done.

Mr. Murray had nothing to add to his testimony for Item 6. He agreed with staff's recommendation to deny the appeal.

Member Steinmeier moved to deny the appeal. With a second by Member Sherwood, the motion passed unanimously.

INFORMATIONAL HEARING PURSUANT TO CALIFORNIA CODE OF REGULATIONS, TITLE 2, CHAPTER 2.5, ARTICLE 8 (action)

REVIEW OF CLAIMING INSTRUCTIONS ISSUED BY THE STATE CONTROLLER'S OFFICE

- Item 9 *Pupil Suspension: Parent Classroom Visits - 97-CI-01 (CSM-4474)*
San Diego Unified School District, Requester
Education Code Section 48900.1
Statutes of 1988, Chapter 1284 and Statutes of 1989, Chapter 213

This item was postponed.

EXECUTIVE DIRECTOR'S REPORT

Item 10 Workload, Governor's Budget, Local Claims Bill, Legislation (info)

Paula Higashi reported the following:

- *Workload.* The Commission has received one new test claim and 40 new incorrect reduction claims, 39 of which involve *Certification of Teacher Evaluator's Demonstrated Competence*.
- *Special Education.* All parties have been informed that the proposed parameters and guidelines for Special Education will be the first order of business at the Commission's May 25, 2000 hearing, beginning at 9:30 a.m.
- *Budget.* The Assembly Budget Subcommittee No. 4 approved the Commission's budget this week, which has now been approved by both houses. There were no issues in conference.
- *Claims Bill.* The Local Government Claims Bill will be amended to include the pending statewide cost estimates and deficiency information from the State Controller's Office report.
- *Legislation.* Currently, there are two bills that would impact the Commission's operations. Assembly Bill 2624 was set for hearing and approved on April 26, 2000. (See discussion below.)
- *Rulemaking.* Staff is reviewing the input from the Commission's workshop last month. After close of the public comment period, staff will likely bring back modifications to those original proposals.
- *Web Site.* The Commission's web site has a new look that conforms to state standards. Member Foulkes suggested providing biographies of the Commission members, or hyperlinks to their biographies on their homepages. Member Steinmeier noted that the biographies might need updating. The Chair suggested the Members help staff by providing the necessary information.
- *Office Move.* The Commission staff will be at its new location on May 1, 2000. The new e-mail addresses will be: firstname.lastname@csm.ca.gov
- *Next Agenda.* The May agenda tentatively includes *Special Education*, a review of claiming instructions, statewide cost estimate, proposed amendments to parameters and guidelines, a test claim, incorrect reduction claim, and proposed statements of decision. Tentative agendas for June and July were included in the binders.

Discussion on Legislation

Member Foulkes stated that, of the 52 boards that the Controller sits on, the Commission takes the least active role in legislation, though it has significant legislation that affects it. Member Foulkes explained that he did not feel he was the appropriate person to answer questions about the Commission, though he is being put in that position when he is there representing the Controller. He suggested that it would be helpful if staff analyzed the appropriate bills for discussion at Commission hearings and that the Commission could take a position on bills of their choice. The Executive Director could attend legislative hearings to provide accurate, factual information.

Member Lazar asked what the Commission had done in the past. Ms. Higashi explained that the Commission has not taken formal positions on legislation, mainly because some of the members' own departments have a position or recommendation. Since her appointment as Executive Director, she had not been asked to testify on bills. In the past, committee consultants have asked technical questions about Commission operations, though not on bills this year. Member Lazar asked if it would compromise Ms. Higashi if Commission members appeared and testified or stated opinions. Ms. Higashi replied that that would be an issue for the Commission to consider.

Chairperson Porini noted that the Department of Finance (DOF) abstains from taking positions on bills because they have the next-to-final say in their enrolled bill report to the Governor. She submitted that it would be compromising for the DOF to take a position here and then do the enrolled bill report. She preferred to remain in the position of not actively pursuing legislation or taking a role before the legislature.

Member Beltrami asked if that precluded individual members. The Chair replied that it did not, though she did not think a member could represent the Commission without a vote of the Commission. She would not be able to vote on legislation.

Member Foulkes understood the Chair's concerns, but thought it was the Commission's due diligence to at least analyze and discuss the bills to know the effects, regardless of whether they take a position. He suggested having the Executive Director available to testify, even if in a neutral capacity.

Member Gomes agreed that would be helpful, if the facts were being misunderstood or misrepresented. However, her office, the Governor's Office of Planning and Research, also does enrolled bill reports. She stated that it would create a conflict for her to represent the Commission. However, Member Gomes agreed that it was a good idea to have a representative for factual issues without necessarily taking a stance.

Member Steinmeier stated that she would also like to see analyses on bills affecting the Commission. Further, she would like to have the Executive Director or Chief Legal Counsel to represent the Commission and answer technical questions without taking a position.

Discussion ensued as to who could appropriately represent the Commission. Chairperson Porini directed staff to prepare bill analyses for the two current bills impacting the Commission. Ms. Higashi agreed.

Item 11 Proposed Resolution: Open Meetings Act Incorrect Reduction Claims
(action)

Shirley Opie, Assistant Executive Director to the Commission, presented this item. She explained that local agencies and school districts have filed 368 incorrect reduction claims (IRCs) disputing the State Controller's adjustments to their reimbursement claims filed under the *Open Meetings Act* mandate. The San Diego Unified School District filed the first IRC with the Commission. In September 1999, the Commission heard that claim and concluded that the minutes-per-page standard used by the Controller in reviewing the reimbursement claims was arbitrarily developed and that the Controller's application of this standard resulted in an incorrect reduction of San Diego's claim. Based on the Commission's decision on San Diego's IRC, the Controller began notifying claimants who had filed *Open Meetings Act* IRCs that they will issue warrants for reductions made based on the per-page standard upon receipt of an appropriation.

Ms. Opie noted that, accordingly, there is no longer a disputed matter for determination by the Commission on many of these IRCs. Therefore, staff recommended that the Commission adopt the proposed resolution which directs the Executive Director to close the file on each IRC under the *Open Meetings Act* mandate for each claimant who does not dispute the amount the Controller has agreed to pay, to send them a copy of this resolution, and to set any disputed IRCs filed on this mandate for Commission hearing and determination. On April 26, 2000, staff met with several representatives of cities, counties, and school districts, and there was general agreement regarding the resolution.

Member Beltrami moved to adopt the resolution. With a second by Member Sherwood, the resolution was adopted unanimously.

Note: Member Beltrami stated that, on April 26, 2000, as the Commission's hearing officer, he met with the State Controller's Office and San Bernardino County. He noted that the parties are still working on the issue.

CLOSED EXECUTIVE SESSION PURSUANT TO GOVERNMENT CODE SECTIONS 11126 and 17526. (Closed executive session was held from 11:42 a.m. to 12:15 p.m.)

Chairperson Porini recessed into closed executive session pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the published notice of the agenda and Government Code section 11126, subdivision (a), and section 17527, to confer on personnel matters listed on the published notice and agenda.

PENDING LITIGATION

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matters pursuant to Government Code section 11126, subdivision (e)(1):

- *County of San Bernardino v. State of California, et al.*, Case Number SCV52190, in the Superior Court of the State of California, County of Los Angeles.
- *County of Sonoma v. Commission on State Mandates, et al.*, Case Number A089524, in the Appellate Court of California, First Appellate District, Division 1.

- *San Diego Unified School District v. Commission on State Mandates, et al.*, Case Number GIC 737638, in the Superior Court of the State of California, County of San Diego.
- *Long Beach Unified School District v. Commission on State Mandates*, Case Number BS061159, in the Superior Court of the State of California, County of Los Angeles.

To confer with and receive advice from legal counsel, for consideration and action, as necessary and appropriate, upon the following matter pursuant to Government Code section 11126, subdivision (e)(2):

- Based on existing facts and circumstances, there is a specific matter which presents a significant exposure to litigation against the Commission on State Mandates, its members and/or staff (Gov. Code, § 11126, subd. (e)(2)(B)(i).).

PERSONNEL

To confer on personnel matters pursuant to Government Code sections 11126, subdivision (a) and 17526.

Discussion and action, if appropriate, on report from Personnel Sub-Committee.

REPORT FROM CLOSED EXECUTIVE SESSION

Chairperson Porini reported from closed executive session that the Commission had met pursuant to Government Code section 11126, subdivision (e), to confer with and receive advice from legal counsel for consideration and action, as necessary and appropriate, upon the pending litigation listed on the public notice and agenda, and Government Code section 11126, subdivision (a), and section 17527, to confer on personnel matters listed on the published notice and agenda.

ADJOURNMENT

Hearing no further business, the Chair adjourned the meeting at 12:16 p.m.

PAULA HIGASHI
Executive Director

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